

SENATE BILL No. 462

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-29.

Synopsis: Certificate of need. Establishes a moratorium on the construction of hospitals, ambulatory outpatient surgical centers, and health facilities. Establishes a certificate of need committee. Requires the committee to review certificate of need applications. Allows the state department of health to establish fees for certificate of need applications. Requires the committee to submit an annual report to the health finance commission.

Effective: Upon passage; July 1, 2004.

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January 13, 2004, read first time and referred to Committee on Health and Provider Services.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 462

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. "Ambulatory
3 outpatient surgical center", for purposes of IC 16-21 **and IC 16-29-1.5**,
4 means a public or private institution that meets the following
5 conditions:

6 (1) Is established, equipped, and operated primarily for the
7 purpose of performing surgical procedures and services.

8 (2) Is operated under the supervision of at least one (1) licensed
9 physician or under the supervision of the governing board of the
10 hospital if the center is affiliated with a hospital.

11 (3) Permits a surgical procedure to be performed only by a
12 physician, dentist, or podiatrist who meets the following
13 conditions:

14 (A) Is qualified by education and training to perform the
15 surgical procedure.

16 (B) Is legally authorized to perform the procedure.

17 (C) Is privileged to perform surgical procedures in at least one



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(1) hospital within the county or an Indiana county adjacent to the county in which the ambulatory outpatient surgical center is located.

(D) Is admitted to the open staff of the ambulatory outpatient surgical center.

(4) Requires that a licensed physician with specialized training or experience in the administration of an anesthetic supervise the administration of the anesthetic to a patient and remain present in the facility during the surgical procedure, except when only a local infiltration anesthetic is administered.

(5) Provides at least one (1) operating room and, if anesthetics other than local infiltration anesthetics are administered, at least one (1) postanesthesia recovery room.

(6) Is equipped to perform diagnostic x-ray and laboratory examinations required in connection with any surgery performed.

(7) Does not provide accommodations for patient stays of longer than twenty-four (24) hours.

(8) Provides full-time services of registered and licensed nurses for the professional care of the patients in the postanesthesia recovery room.

(9) Has available the necessary equipment and trained personnel to handle foreseeable emergencies such as a defibrillator for cardiac arrest, a tracheotomy set for airway obstructions, and a blood bank or other blood supply.

(10) Maintains a written agreement with at least one (1) hospital for immediate acceptance of patients who develop complications or require postoperative confinement.

(11) Provides for the periodic review of the center and the center's operations by a committee of at least three (3) licensed physicians having no financial connections with the center.

(12) Maintains adequate medical records for each patient.

(13) Meets all additional minimum requirements as established by the state department for building and equipment requirements.

(14) Meets the rules and other requirements established by the state department for the health, safety, and welfare of the patients.

SECTION 2. IC 16-18-2-67 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 67. (a) "Comprehensive care bed", for purposes of ~~IC 16-29-1~~, **IC 16-29-1.7**, has the meaning set forth in ~~IC 16-29-1-1~~. **IC 16-29-1.7-1**.

(b) "Comprehensive care bed", for purposes of IC 16-29-2, has the meaning set forth in IC 16-29-2-1.

SECTION 3. IC 16-18-2-179, AS AMENDED BY P.L.162-1999,

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SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 179. (a) "Hospital", except as provided in subsections (b) through ~~(f)~~, **(g)**, means a hospital that is licensed under IC 16-21-2.

(b) "Hospital", for purposes of IC 16-21, means an institution, a place, a building, or an agency that holds out to the general public that it is operated for hospital purposes and that it provides care, accommodations, facilities, and equipment, in connection with the services of a physician, to individuals who may need medical or surgical services. The term does not include the following:

(1) Freestanding health facilities.

(2) Hospitals or institutions specifically intended to diagnose, care, and treat the following:

(A) Mentally ill individuals (as defined in IC 12-7-2-131).

(B) Individuals with developmental disabilities (as defined in IC 12-7-2-61).

(3) Offices of physicians where patients are not regularly kept as bed patients.

(4) Convalescent homes, boarding homes, or homes for the aged.

(c) "Hospital", for purposes of IC 16-22-8, has the meaning set forth in IC 16-22-8-5.

(d) "Hospital" or "tuberculosis hospital", for purposes of IC 16-24, means an institution or a facility for the treatment of individuals with tuberculosis.

(e) "Hospital", for purposes of IC 16-29-1.5, means an institution, a place, a building, or an agency that holds out to the general public that it is operated for hospital purposes and that it provides care, accommodations, facilities, and equipment, in connection with the services of a physician, to individuals who may need medical or surgical services. The term does not include the following:

(1) Freestanding health facilities.

(2) Hospitals or institutions specifically intended to diagnose, care, and treat individuals with developmental disabilities (as defined in IC 12-7-2-61).

(3) Offices of physicians where patients are not regularly kept as bed patients.

(4) Convalescent homes, boarding homes, or homes for the aged.

(f) "Hospital", for purposes of IC 16-34, means a hospital (as defined in subsection (b)) that:

(1) is required to be licensed under IC 16-21-2; or

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(2) is operated by an agency of the United States.
~~(f)~~ (g) "Hospital", for purposes of IC 16-41-12, has the meaning set forth in IC 16-41-12-6.

SECTION 4. IC 16-29-1.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 1.3. Certificate of Need Committee

Sec. 1. The certificate of need committee is established.

Sec. 2. (a) The certificate of need committee consists of the following eleven (11) members:

- (1) One (1) physician licensed under IC 25-22.5.
- (2) One (1) individual who is not associated with a hospital or a health facility except as a consumer.
- (3) One (1) individual representing the business sector.
- (4) One (1) individual engaged in hospital administration.
- (5) One (1) individual engaged in the administration of a rural hospital.
- (6) One (1) individual engaged in the administration of a health facility.
- (7) One (1) individual representing the insurance industry.
- (8) One (1) individual representing the labor sector.
- (9) One (1) individual representing minority health populations.
- (10) The commissioner or the commissioner's designee.
- (11) The director of the office of Medicaid policy and planning or the director's designee.

(b) The governor shall appoint the members set forth in subsection (a)(1) through (a)(9) for four (4) year terms. A member described in this subsection may be reappointed to the committee for one (1) additional four (4) year term.

(c) The commissioner or the commissioner's designee shall be the chairperson of the committee.

Sec. 3. The certificate of need committee shall do the following:

- (1) Review an application for certificate of need applied for under the following statutes:
 - (A) IC 16-29-1.5.
 - (B) IC 16-29-1.7.
- (2) Prepare the annual report required under:
 - (A) IC 16-29-1.5- 7; and
 - (B) IC 16-29-1.7-10.
- (3) Adopt criteria to be considered by the committee in reviewing an application for certificate of need under

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1 IC 16-29-1.5 and IC 16-29-1.7.

2 (4) Make recommendations to the state department
3 concerning whether an application for certificate of need
4 reviewed by the committee should be granted by the state
5 department.

6 Sec. 4. The state department shall staff the committee. The
7 expenses of the committee shall be paid by the state department.

8 Sec. 5. (a) Each member of the committee who is a state
9 employee is entitled to the minimum salary per diem provided by
10 IC 4-10-11-2.1(b). The member is also entitled to reimbursement
11 for traveling expenses as provided under IC 4-13-1-4 and other
12 expenses actually incurred in connection with the member's duties
13 as provided in the state policies and procedures established by the
14 Indiana department of administration and approved by the budget
15 agency.

16 (b) Each member of the committee who is a state employee is
17 entitled to reimbursement for traveling expenses as provided under
18 IC 4-13-1-4 and other expenses actually incurred in connection
19 with the member's duties as provided in the state policies and
20 procedures established by the Indiana department of
21 administration and approved by the budget agency.

22 Sec. 6. The affirmative votes of a majority of the members
23 appointed to the committee are required for the committee to take
24 action on any measure.

25 SECTION 5. IC 16-29-1.5 IS ADDED TO THE INDIANA CODE
26 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2004]:

28 **Chapter 1.5. Hospitals and Ambulatory Outpatient Surgical**
29 **Centers**

30 Sec. 1. (a) The certificate of need committee established by
31 IC 16-29-1.3-1 shall review the following applications for a
32 certificate of need:

33 (1) Applications for a certificate of need to construct or add
34 a hospital required to be licensed under IC 16-21-2.

35 (2) Applications to construct or add an ambulatory outpatient
36 surgical center required to be licensed under IC 16-21-2.

37 (b) Hospital beds converted under IC 16-29-3 to:

38 (1) skilled care comprehensive long term care beds; or

39 (2) intermediate care comprehensive long term care beds;

40 are exempt from review under this chapter.

41 Sec. 2. (a) The certificate of need committee shall make a finding
42 on an application for a certificate of need based on information

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prepared by the state department in accordance with IC 16-30 and any other relevant information as to the need for an entity described in section 1 of this chapter as requested in the application.

(b) The certificate of need committee shall recommend and the state department shall approve a certificate of need for a hospital or an ambulatory outpatient surgical center only after finding the following:

(1) The addition of a hospital or an outpatient surgical center in the county:

(A) is necessary;

(B) will meet an unmet need in the proposed area to be served; and

(C) is the most efficient and effective method of meeting that unmet need.

(2) The applicant for the certificate of need has illustrated or documented the applicant's experience or capacity to provide quality, effective, and efficient care that includes a description of any past or current adverse licensure action against any facility owned, operated, or managed by the applicant.

Sec. 3. (a) An entity described in section 1 of this chapter may not be constructed or added without the review and approval of an application for a certificate of need required under this chapter.

(b) The review and approval of an application for a certificate of need required under this chapter is a condition to the licensure of the entity.

Sec. 4. A certificate of need for a project to construct or add an entity described in section 1 of this chapter that receives final approval of the state department under this chapter becomes void twelve (12) months after the determination becomes final unless:

(1) construction plans for the project are approved by the state department and the office of the state fire marshal;

(2) the applicant has completed construction of the project's foundation in conformity with the approved plans as certified by an independent architect licensed under IC 25-4 or an independent professional engineer licensed under IC 25-31; and

(3) construction work on the project is continuous and in conformity with the approved plans.

Sec. 5. (a) Unless a certificate of need expires or is voided, the certificate of need once issued is the personal property of the owner and is transferable or alienable. However, the certificate of need

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may not be used outside the county with respect to which the certificate of need was issued.

(b) A person that is granted a certificate of need after the review and approval required under this chapter is the owner of the certificate of need until the person transfers or alienates the ownership interest in the certificate.

Sec. 6. (a) The state department shall adopt rules under IC 4-22-2 to implement this chapter and to establish a reasonable fee for the filing and review of an application under this chapter. A fee established under this section must be sufficient to cover the cost of administering the program. A rule adopted under this chapter may not be waived.

(b) Fees imposed in connection with the review of an application for a certificate of need under this chapter are payable to the state department for use in administration of the certificate of need program under this chapter.

(c) The state department shall factor in the size of the entity proposed within an application and the projected revenues for the proposed entity in determining the entity's application fee.

Sec. 7. The certificate of need committee shall submit a report not later than July 1 of every year beginning July 1, 2005, to the health finance commission established by IC 2-5-23-3. The report must include the following:

- (1) The number of applications for certificate of need under this chapter received during the year by the committee.
- (2) The number of certificate of need applications under this chapter granted by the committee and the reason for granting the certificate of need.
- (3) The number of times the committee met to review applications under this chapter for certificate of need.
- (4) Any other information the committee considers relevant.
- (5) Any information requested by the health finance commission.

Sec. 8. A decision by the certificate of need committee or state department under this chapter is subject to review under IC 4-21.5.

SECTION 6. IC 16-29-1.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 1.7. Health Facilities

Sec. 1. (a) As used in this chapter, "comprehensive care bed" means a bed in a comprehensive care facility that:

- (1) is licensed or is to be licensed under IC 16-28-2; or

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(2) functions as a bed licensed under IC 16-28-2.

(b) The term does not include a comprehensive care bed that will be used solely to provide specialized services described in IC 16-29-2. The state department shall review applications for a certificate of need for a comprehensive care bed used solely to provide specialized services under IC 16-29-2.

Sec. 2. (a) Except as provided in IC 16-29-2, the certificate of need committee established by IC 16-29-1.3-1 shall review the following applications for a certificate of need:

(1) Applications for a certificate of need for comprehensive care beds that are to be certified for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the federal Social Security Act (49 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.).

(2) Applications for a certificate of need to construct or add comprehensive care beds or to convert beds to comprehensive care beds.

(b) The following are exempt from review under this chapter:

(1) The conversion under IC 16-29-4 of existing health facility beds to ICF/MR beds.

(2) The construction under IC 16-29-4 of new ICF/MR facilities after June 30, 1987.

Sec. 3. Except as provided by IC 16-29-2, the certificate of need committee shall make a finding based on information prepared by the state department in accordance with IC 16-30 and any other relevant information as to the need for an entity described in section 2 of this chapter as requested in the application for a certificate of need. The committee shall recommend and the state department shall approve a certificate of need for additional comprehensive care beds or the certification of comprehensive care beds only after finding the following:

(1) The certification or addition of comprehensive care beds in the county:

(A) is necessary;

(B) will meet an unmet need in the proposed area to be served; and

(C) is the most efficient and effective method of meeting that unmet need.

(2) The applicant for a certificate of need has illustrated or documented the applicant's experience or capacity to provide quality, effective, and efficient care that includes a description of any past or current adverse licensure action against any

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facility owned, operated, or managed by the applicant.

Sec. 4. The certificate of need committee shall presume that additional comprehensive care beds are not needed in the county of application if:

(1) the existing utilization rate for all certified comprehensive care beds is less than ninety percent (90%); or

(2) the addition of the certified beds proposed in the application for a certificate of need will reduce the existing utilization rate for all certified comprehensive care beds below ninety percent (90%).

Sec. 5. (a) Except as provided in IC 16-29-2, IC 16-29-3, and IC 16-29-4:

(1) a comprehensive care bed may not be constructed or added; and

(2) a bed may not be converted to a comprehensive care bed; without the review and approval of a certificate of need required under this chapter.

(b) Comprehensive care beds that are not certified for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the federal Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq., respectively) may not be certified without the review and approval required under this chapter.

(c) The review and approval of a certificate of need required in this chapter is a condition to the licensure of the facility.

Sec. 6. A certificate of need for a project to construct, add, or convert beds that receives final approval of the state department under this chapter or IC 16-29-1 (before its repeal) becomes void twelve (12) months after the determination becomes final unless:

(1) construction plans for the project are approved by the state department and the office of the state fire marshal;

(2) the applicant has completed construction of the project's foundation in conformity with the approved plans as certified by an independent architect licensed under IC 25-4 or an independent professional engineer licensed under IC 25-31; and

(3) construction work on the project is continuous and in conformity with the approved plans.

Sec. 7. (a) Unless the certificate of need expires or is voided, the certificate of need is the personal property of the owner once issued and is transferable or alienable, except that the certificate of need may not be used outside the county with respect to which the

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1 certificate of need was issued.

2 (b) A person that is granted a certificate of need after the review
3 and approval required under this chapter is the owner of the
4 certificate of need until the person transfers or alienates the
5 ownership interest in the certificate.

6 Sec. 8. (a) The state department shall adopt rules under
7 IC 4-22-2 to implement this chapter and to establish a reasonable
8 fee for the filing and review of an application under this chapter.
9 A fee established under this section must be sufficient to cover the
10 cost of administering the program. A rule adopted under this
11 chapter may not be waived.

12 (b) Fees imposed in connection with the review of an application
13 for a certificate of need under this chapter are payable to the state
14 department for use in administration of the certificate of need
15 program created by this chapter.

16 (c) The state department shall consider whether to factor in the
17 size of the entity proposed within an application and the projected
18 revenues for the proposed entity in determining the entity's
19 application fee.

20 Sec. 9. The certificate of need committee shall consider the
21 following when determining whether to recommend the issuance
22 of a certificate of need:

23 (1) Information, if available, regarding whether the applicant
24 has provided quality care services.

25 (2) The costs the applicant has incurred to provide services.

26 Sec. 10. The certificate of need committee shall submit a report
27 not later than July 1 of every year beginning July 1, 2005, to the
28 health finance commission established by IC 2-5-23-3. The report
29 must include the following:

30 (1) The number of applications for certificate of need under
31 this chapter received during the year by the committee.

32 (2) The number of certificate of need applications under this
33 chapter granted by the committee and the reason for granting
34 each certificate of need.

35 (3) The number of times the committee met to review
36 applications under this chapter for certificate of need.

37 (4) Any other information the committee considers relevant.

38 (5) Any information requested by the health finance
39 commission.

40 Sec. 11. A decision by the certificate of need committee under
41 this chapter is subject to review under IC 4-21.5.

42 SECTION 7. IC 16-29-3-1 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. Notwithstanding
 2 ~~IC 16-29-1~~, **IC 16-29-1.7**, a hospital licensed under IC 16-21-2 may
 3 convert, **without having to obtain a certificate of need under**
 4 **IC 16-29-1.5:**

- 5 (1) beginning January 1, 1986, not more than thirty (30) acute
- 6 care beds to skilled care comprehensive long term care beds; and
- 7 (2) beginning June 1, 1989, not more than an additional twenty
- 8 (20) acute care beds to either intermediate care comprehensive
- 9 long term care beds or skilled care comprehensive long term care
- 10 beds;

11 that are to be certified for participation in a state or federal
 12 reimbursement program, including programs under Title XVIII or Title
 13 XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C.
 14 1396 et seq.), if those beds will function essentially as beds licensed
 15 under IC 16-28.

16 SECTION 8. IC 16-29-4-1 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) This chapter
 18 applies to the following:

- 19 (1) The conversion of existing health facility beds to ICF/MR
- 20 beds.
- 21 (2) The construction of new ICF/MR facilities after June 30,
- 22 1987.

23 (b) **IC 16-29-1.7 does not apply to the:**

- 24 (1) conversion of existing health facility beds to ICF/MR beds;
- 25 or

26 (2) construction of new ICF/MR facilities after June 30, 1987;
 27 under this chapter.

28 SECTION 9. [EFFECTIVE UPON PASSAGE] (a)
 29 Notwithstanding IC 16-29-1.7, as added by this act, a health facility
 30 (as defined in IC 16-18-2-167) is not required to obtain a certificate
 31 of need to construct comprehensive care beds (as defined in
 32 IC 16-29-1.7-1, as added by this act) if:

- 33 (1) construction plans for the project are approved by the
- 34 state department of health and the office of the state fire
- 35 marshal not later than May 15, 2004;
- 36 (2) the applicant has completed construction of the project's
- 37 foundation not later than July 1, 2004, in conformity with the
- 38 approved plans as certified by an independent architect
- 39 licensed under IC 25-4 or an independent professional
- 40 engineer licensed under IC 25-31; and
- 41 (3) construction work on the project is continuous and in
- 42 conformity with the approved plans.

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1 **(b) This SECTION expires July 1, 2005.**

2 SECTION 10. [EFFECTIVE JULY 1, 2004] (a) Notwithstanding
3 IC 16-29-1.3-2, as added by this act, the initial members of the
4 certificate of need committee shall be appointed as follows:

5 (1) The members appointed under IC 16-29-1.3-2(a)(1)
6 through IC 16-29-1.3-2(a)(2), both as added by this act, shall
7 each be appointed to a one (1) year term.

8 (2) The members appointed under IC 16-29-1.3-2(a)(3)
9 through IC 16-29-1.3-2(a)(4), both as added by this act, shall
10 each be appointed to a two (2) year term.

11 (3) The members appointed under IC 16-29-1.3-2(a)(5)
12 through IC 16-29-1.3-2(a)(7), all as added by this act, shall
13 each be appointed to a three (3) year term.

14 (4) The members appointed under IC 16-29-1.3-2(a)(8)
15 through IC 16-29-1.3-2(a)(9), both as added by this act, shall
16 each be appointed to a four (4) year term.

17 **(b) This SECTION expires December 31, 2005.**

18 SECTION 11. An emergency is declared for this act.

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